



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2012 REGULAR SESSION

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SENATE BILL NO. 213

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THURSDAY, MARCH 22, 2012

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The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED  
DATE April 11, 2012  
6:02 p.m.  
ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY Mary Sue Nelson

1 AN ACT relating to transitional living support for persons committed to the custody  
2 of the Commonwealth.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 600.020 is amended to read as follows:

5 As used in KRS Chapters 600 to 645, unless the context otherwise requires:

6 (1) "Abused or neglected child" means a child whose health or welfare is harmed or  
7 threatened with harm when his parent, guardian, or other person exercising  
8 custodial control or supervision of the child:

9 (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as  
10 defined in this section by other than accidental means;

11 (b) Creates or allows to be created a risk of physical or emotional injury as  
12 defined in this section to the child by other than accidental means;

13 (c) Engages in a pattern of conduct that renders the parent incapable of caring for  
14 the immediate and ongoing needs of the child including, but not limited to,  
15 parental incapacity due to alcohol and other drug abuse as defined in KRS  
16 222.005;

17 (d) Continuously or repeatedly fails or refuses to provide essential parental care  
18 and protection for the child, considering the age of the child;

19 (e) Commits or allows to be committed an act of sexual abuse, sexual  
20 exploitation, or prostitution upon the child;

21 (f) Creates or allows to be created a risk that an act of sexual abuse, sexual  
22 exploitation, or prostitution will be committed upon the child;

23 (g) Abandons or exploits the child;

24 (h) Does not provide the child with adequate care, supervision, food, clothing,  
25 shelter, and education or medical care necessary for the child's well-being. A  
26 parent or other person exercising custodial control or supervision of the child  
27 legitimately practicing the person's religious beliefs shall not be considered a

1 negligent parent solely because of failure to provide specified medical  
2 treatment for a child for that reason alone. This exception shall not preclude a  
3 court from ordering necessary medical services for a child; or

4 (i) Fails to make sufficient progress toward identified goals as set forth in the  
5 court-approved case plan to allow for the safe return of the child to the parent  
6 that results in the child remaining committed to the cabinet and remaining in  
7 foster care for fifteen (15) of the most recent twenty-two (22) months;

8 (2) "Aggravated circumstances" means the existence of one (1) or more of the  
9 following conditions:

10 (a) The parent has not attempted or has not had contact with the child for a period  
11 of not less than ninety (90) days;

12 (b) The parent is incarcerated and will be unavailable to care for the child for a  
13 period of at least one (1) year from the date of the child's entry into foster care  
14 and there is no appropriate relative placement available during this period of  
15 time;

16 (c) The parent has sexually abused the child and has refused available treatment;

17 (d) The parent has been found by the cabinet to have engaged in abuse of the  
18 child that required removal from the parent's home two (2) or more times in  
19 the past two (2) years; or

20 (e) The parent has caused the child serious physical injury;

21 (3) "Beyond the control of parents" means a child who has repeatedly failed to follow  
22 the reasonable directives of his or her parents, legal guardian, or person exercising  
23 custodial control or supervision other than a state agency, which behavior results in  
24 danger to the child or others, and which behavior does not constitute behavior that  
25 would warrant the filing of a petition under KRS Chapter 645;

26 (4) "Beyond the control of school" means any child who has been found by the court to  
27 have repeatedly violated the lawful regulations for the government of the school as

1 provided in KRS 158.150, and as documented in writing by the school as a part of  
2 the school's petition or as an attachment to the school's petition. The petition or  
3 attachment shall describe the student's behavior and all intervention strategies  
4 attempted by the school;

5 (5) "Boarding home" means a privately owned and operated home for the boarding and  
6 lodging of individuals which is approved by the Department of Juvenile Justice or  
7 the cabinet for the placement of children committed to the department or the  
8 cabinet;

9 (6) "Cabinet" means the Cabinet for Health and Family Services;

10 (7) "Certified juvenile facility staff" means individuals who meet the qualifications of,  
11 and who have completed a course of education and training in juvenile detention  
12 developed and approved by, the Department of Juvenile Justice after consultation  
13 with other appropriate state agencies;

14 (8) "Child" means any person who has not reached his eighteenth birthday, unless  
15 otherwise provided;

16 (9) "Child-caring facility" means any facility or group home other than a state facility,  
17 Department of Juvenile Justice contract facility or group home, or one certified by  
18 an appropriate agency as operated primarily for educational or medical purposes,  
19 providing residential care on a twenty-four (24) hour basis to children not related by  
20 blood, adoption, or marriage to the person maintaining the facility;

21 (10) "Child-placing agency" means any agency, other than a state agency, which  
22 supervises the placement of children in foster family homes or child-caring facilities  
23 or which places children for adoption;

24 (11) "Clinical treatment facility" means a facility with more than eight (8) beds  
25 designated by the Department of Juvenile Justice or the cabinet for the treatment of  
26 mentally ill children. The treatment program of such facilities shall be supervised by  
27 a qualified mental health professional;

- 1 (12) "Commitment" means an order of the court which places a child under the custodial  
2 control or supervision of the Cabinet for Health and Family Services, Department of  
3 Juvenile Justice, or another facility or agency until the child attains the age of  
4 eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the  
5 committing court terminates or extends the order;
- 6 (13) "Community-based facility" means any nonsecure, homelike facility licensed,  
7 operated, or permitted to operate by the Department of Juvenile Justice or the  
8 cabinet, which is located within a reasonable proximity of the child's family and  
9 home community, which affords the child the opportunity, if a Kentucky resident, to  
10 continue family and community contact;
- 11 (14) "Complaint" means a verified statement setting forth allegations in regard to the  
12 child which contain sufficient facts for the formulation of a subsequent petition;
- 13 (15) "Court" means the juvenile session of District Court unless a statute specifies the  
14 adult session of District Court or the Circuit Court;
- 15 (16) "Court-designated worker" means that organization or individual delegated by the  
16 Administrative Office of the Courts for the purposes of placing children in  
17 alternative placements prior to arraignment, conducting preliminary investigations,  
18 and formulating, entering into, and supervising diversion agreements and  
19 performing such other functions as authorized by law or court order;
- 20 (17) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- 21 (18) "Department" means the Department for Community Based Services;
- 22 (19) "Dependent child" means any child, other than an abused or neglected child, who is  
23 under improper care, custody, control, or guardianship that is not due to an  
24 intentional act of the parent, guardian, or person exercising custodial control or  
25 supervision of the child;
- 26 (20) "Detention" means the safe and temporary custody of a juvenile who is accused of  
27 conduct subject to the jurisdiction of the court who requires a restricted

- 1 environment for his or her own or the community's protection;
- 2 (21) "Detention hearing" means a hearing held by a judge or trial commissioner within  
 3 twenty-four (24) hours, exclusive of weekends and holidays, of the start of any  
 4 period of detention prior to adjudication;
- 5 (22) "Diversion agreement" means an agreement entered into between a court-designated  
 6 worker and a child charged with the commission of offenses set forth in KRS  
 7 Chapters 630 and 635, the purpose of which is to serve the best interest of the child  
 8 and to provide redress for those offenses without court action and without the  
 9 creation of a formal court record;
- 10 (23) "Eligible youth" means a person who is or has been committed to the cabinet as  
 11 dependent, neglected, or abused, eighteen (18) years of age to nineteen (19) years  
 12 of age, and who is requesting to extend or reinstate his or her commitment to the  
 13 cabinet in order to participate in state or federal educational programs or to  
 14 establish independent living arrangements;
- 15 (24) "Emergency shelter" is a group home, private residence, foster home, or similar  
 16 homelike facility which provides temporary or emergency care of children and  
 17 adequate staff and services consistent with the needs of each child;
- 18 (25) [(24)] "Emotional injury" means an injury to the mental or psychological capacity or  
 19 emotional stability of a child as evidenced by a substantial and observable  
 20 impairment in the child's ability to function within a normal range of performance  
 21 and behavior with due regard to his age, development, culture, and environment as  
 22 testified to by a qualified mental health professional;
- 23 (26) [(25)] "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- 24 (27) [(26)] "Foster family home" means a private home in which children are placed for  
 25 foster family care under supervision of the cabinet or a licensed child-placing  
 26 agency;
- 27 (28) [(27)] "Habitual runaway" means any child who has been found by the court to have

1        been absent from his place of lawful residence without the permission of his  
2        custodian for at least three (3) days during a one (1) year period;

3        (29)~~[(28)]~~ "Habitual truant" means any child who has been found by the court to have  
4        been reported as a truant as defined in KRS 159.150(1) two (2) or more times  
5        during a one (1) year period;

6        (30)~~[(29)]~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private  
7        or public facility, health care facility, or part thereof, which is approved by the  
8        cabinet to treat children;

9        (31)~~[(30)]~~ "Independent living" means those activities necessary to assist a committed  
10       child to establish independent living arrangements;

11       (32)~~[(31)]~~ "Informal adjustment" means an agreement reached among the parties, with  
12       consultation, but not the consent, of the victim of the crime or other persons  
13       specified in KRS 610.070 if the victim chooses not to or is unable to participate,  
14       after a petition has been filed, which is approved by the court, that the best interest  
15       of the child would be served without formal adjudication and disposition;

16       (33)~~[(32)]~~ "Intentionally" means, with respect to a result or to conduct described by a  
17       statute which defines an offense, that the actor's conscious objective is to cause that  
18       result or to engage in that conduct;

19       (34)~~[(33)]~~ "Intermittent holding facility" means a physically secure setting, which is  
20       entirely separated from sight and sound from all other portions of a jail containing  
21       adult prisoners, in which a child accused of a public offense may be detained for a  
22       period not to exceed twenty-four (24) hours, exclusive of weekends and holidays  
23       prior to a detention hearing as provided for in KRS 610.265, and in which children  
24       are supervised and observed on a regular basis by certified juvenile facility staff;

25       (35)~~[(34)]~~ "Juvenile holding facility" means a physically secure facility, approved by the  
26       Department of Juvenile Justice, which is an entirely separate portion or wing of a  
27       building containing an adult jail, which provides total sight and sound separation

1 between juvenile and adult facility spatial areas and which is staffed by sufficient  
2 certified juvenile facility staff to provide twenty-four (24) hours per day  
3 supervision;

4 ~~(36)~~~~[(35)]~~ "Least restrictive alternative" means, except for purposes of KRS Chapter  
5 645, that the program developed on the child's behalf is no more harsh, hazardous,  
6 or intrusive than necessary; or involves no restrictions on physical movements nor  
7 requirements for residential care except as reasonably necessary for the protection  
8 of the child from physical injury; or protection of the community, and is conducted  
9 at the suitable available facility closest to the child's place of residence;

10 ~~(37)~~~~[(36)]~~ "Motor vehicle offense" means any violation of the nonfelony provisions of  
11 KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

12 ~~(38)~~~~[(37)]~~ "Near fatality" means an injury that, as certified by a physician, places a child  
13 in serious or critical condition;

14 ~~(39)~~~~[(38)]~~ "Needs of the child" means necessary food, clothing, health, shelter, and  
15 education;

16 ~~(40)~~~~[(39)]~~ "Nonoffender" means a child alleged to be dependent, neglected, or abused  
17 and who has not been otherwise charged with a status or public offense;

18 ~~(41)~~~~[(40)]~~ "Nonsecure facility" means a facility which provides its residents access to the  
19 surrounding community and which does not rely primarily on the use of physically  
20 restricting construction and hardware to restrict freedom;

21 ~~(42)~~~~[(41)]~~ "Nonsecure setting" means a nonsecure facility or a residential home,  
22 including a child's own home, where a child may be temporarily placed pending  
23 further court action. Children before the court in a county that is served by a state  
24 operated secure detention facility, who are in the detention custody of the  
25 Department of Juvenile Justice, and who are placed in a nonsecure alternative by  
26 the Department of Juvenile Justice, shall be supervised by the Department of  
27 Juvenile Justice;



- 1 ~~(43)~~~~((42))~~ "Parent" means the biological or adoptive mother or father of a child;
- 2 ~~(44)~~~~((43))~~ "Person exercising custodial control or supervision" means a person or agency  
 3 that has assumed the role and responsibility of a parent or guardian for the child, but  
 4 that does not necessarily have legal custody of the child;
- 5 ~~(45)~~~~((44))~~ "Petition" means a verified statement, setting forth allegations in regard to the  
 6 child, which initiates formal court involvement in the child's case;
- 7 ~~(46)~~~~((45))~~ "Physical injury" means substantial physical pain or any impairment of  
 8 physical condition;
- 9 ~~(47)~~~~((46))~~ "Physically secure facility" means a facility that relies primarily on the use of  
 10 construction and hardware such as locks, bars, and fences to restrict freedom;
- 11 ~~(48)~~~~((47))~~ "Public offense action" means an action, excluding contempt, brought in the  
 12 interest of a child who is accused of committing an offense under KRS Chapter 527  
 13 or a public offense which, if committed by an adult, would be a crime, whether the  
 14 same is a felony, misdemeanor, or violation, other than an action alleging that a  
 15 child sixteen (16) years of age or older has committed a motor vehicle offense;
- 16 ~~(49)~~~~((48))~~ "Qualified mental health professional" means:
- 17 (a) A physician licensed under the laws of Kentucky to practice medicine or  
 18 osteopathy, or a medical officer of the government of the United States while  
 19 engaged in the performance of official duties;
- 20 (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or  
 21 osteopathy, or a medical officer of the government of the United States while  
 22 engaged in the practice of official duties, and who is certified or eligible to  
 23 apply for certification by the American Board of Psychiatry and Neurology,  
 24 Inc.;
- 25 (c) A psychologist with the health service provider designation, a psychological  
 26 practitioner, a certified psychologist, or a psychological associate licensed  
 27 under the provisions of KRS Chapter 319;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or

(g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;

~~(50)~~~~{(49)}~~ "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for

1 the treatment of children;

2 ~~(51)~~~~((50))~~ "Retain in custody" means, after a child has been taken into custody, the  
3 continued holding of the child by a peace officer for a period of time not to exceed  
4 twelve (12) hours when authorized by the court or the court-designated worker for  
5 the purpose of making preliminary inquiries;

6 ~~(52)~~~~((51))~~ "School personnel" means those certified persons under the supervision of the  
7 local public or private education agency;

8 ~~(53)~~~~((52))~~ "Secretary" means the secretary of the Cabinet for Health and Family  
9 Services;

10 ~~(54)~~~~((53))~~ "Secure juvenile detention facility" means any physically secure facility used  
11 for the secure detention of children other than any facility in which adult prisoners  
12 are confined;

13 ~~(55)~~~~((54))~~ "Serious physical injury" means physical injury which creates a substantial  
14 risk of death or which causes serious and prolonged disfigurement, prolonged  
15 impairment of health, or prolonged loss or impairment of the function of any bodily  
16 member or organ;

17 ~~(56)~~~~((55))~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or  
18 interactions in which the parent, guardian, or other person having custodial control  
19 or supervision of the child or responsibility for his welfare, uses or allows, permits,  
20 or encourages the use of the child for the purposes of the sexual stimulation of the  
21 perpetrator or another person;

22 ~~(57)~~~~((56))~~ "Sexual exploitation" includes, but is not limited to, a situation in which a  
23 parent, guardian, or other person having custodial control or supervision of a child  
24 or responsible for his welfare, allows, permits, or encourages the child to engage in  
25 an act which constitutes prostitution under Kentucky law; or a parent, guardian, or  
26 other person having custodial control or supervision of a child or responsible for his  
27 welfare, allows, permits, or encourages the child to engage in an act of obscene or

1       pornographic photographing, filming, or depicting of a child as provided for under  
2       Kentucky law;

3       ~~(58)~~~~((57))~~ "Social service worker" means any employee of the cabinet or any private  
4       agency designated as such by the secretary of the cabinet or a social worker  
5       employed by a county or city who has been approved by the cabinet to provide,  
6       under its supervision, services to families and children;

7       ~~(59)~~~~((58))~~ "Staff secure facility for residential treatment" means any setting which  
8       assures that all entrances and exits are under the exclusive control of the facility  
9       staff, and in which a child may reside for the purpose of receiving treatment;

10      ~~(60)~~~~((59))~~ (a) "Status offense action" is any action brought in the interest of a child  
11               who is accused of committing acts, which if committed by an adult, would not  
12               be a crime. Such behavior shall not be considered criminal or delinquent and  
13               such children shall be termed status offenders. Status offenses shall include:

- 14               1. Beyond the control of school or beyond the control of parents;
- 15               2. Habitual runaway;
- 16               3. Habitual truant;
- 17               4. Tobacco offenses as provided in KRS 438.305 to 438.340; and
- 18               5. Alcohol offenses as provided in KRS 244.085.

19      (b) Status offenses shall not include violations of state or local ordinances which  
20               may apply to children such as a violation of curfew;

21      ~~(61)~~~~((60))~~ "Take into custody" means the procedure by which a peace officer or other  
22               authorized person initially assumes custody of a child. A child may be taken into  
23               custody for a period of time not to exceed two (2) hours;

24      ~~(62)~~ ***"Transitional living support" means all benefits to which an eligible youth is***  
25               ***entitled upon being granted extended or reinstated commitment to the cabinet by***  
26               ***the court;***

27      ~~(63)~~ ***"Transition plan" means a plan that is personalized at the direction of the youth***

that includes specific options on housing; health insurance; education; local opportunities for mentors and continuing support services; and work force supports and employment services; and is as detailed as the youth may elect;

~~(64)~~~~((61))~~ "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:

- (a) Who was brought before the court and made subject to the order;
- (b) Whose future conduct was regulated by the order;
- (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
- (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.

~~(65)~~~~((62))~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

~~(66)~~~~((63))~~ "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and

~~(67)~~~~((64))~~ "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

➔Section 2. KRS 620.140 is amended to read as follows:

- (1) In determining the disposition of all cases brought on behalf of dependent, neglected, or abused children, the juvenile session of the District Court, in the best interest of the child, shall have, but shall not be limited to, the following

1 dispositional alternatives:

2 (a) Informal adjustment of the case;

3 (b) Protective orders, such as the following:

4 1. Requiring the parent or any other person to abstain from any conduct  
5 abusing, neglecting, or making the child dependent;

6 2. Placing the child in his own home under supervision of the cabinet or its  
7 designee with services as determined to be appropriate by the cabinet;  
8 and

9 3. Orders authorized by KRS 403.740 and 403.750;

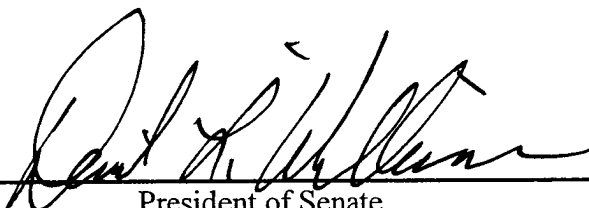
10 (c) Removal of the child to the custody of an adult relative, other person, or child-  
11 caring facility or child-placing agency, taking into consideration the wishes of  
12 the parent or other person exercising custodial control or supervision. Before  
13 any child is committed to the cabinet or placed out of his home under the  
14 supervision of the cabinet, the court shall determine that reasonable efforts  
15 have been made by the court or the cabinet to prevent or eliminate the need for  
16 removal and that continuation in the home would be contrary to the welfare of  
17 the child;~~or~~

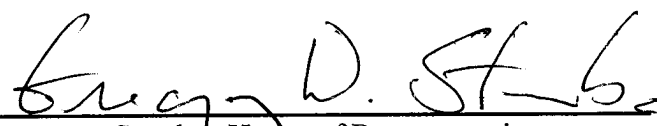
18 (d) Commitment of the child to the custody of the cabinet for placement for an  
19 indeterminate period of time not to exceed his or her attainment of the age  
20 eighteen (18), unless the youth elects to extend his or her commitment  
21 beyond the age of eighteen (18) under paragraph (e) of this subsection.  
22 Beginning at least six (6) months prior to an eligible youth attaining the age  
23 of eighteen (18), the cabinet shall provide the eligible youth with education,  
24 encouragement, assistance, and support regarding the development of a  
25 transition plan, and inform the eligible youth of his or her right to extend  
26 commitment beyond the age of eighteen (18); or

27 (e) ~~[To allow participation in state or federal educational programs or to permit~~

1       ~~the cabinet to assist the child in establishing independent living arrangements,~~  
2       ~~any person who is or has been committed to the cabinet as dependent,~~  
3       ~~neglected, or abused may request that the court }~~Extend or reinstate an  
4       eligible youth's~~[his]~~ commitment up to the age of twenty-one (21) to receive  
5       transitional living support. The request shall be made by the youth prior to  
6       ~~[the person's ]attaining~~ nineteen (19) years of age~~[eighteen (18) years and six~~  
7       ~~(6) months of age]~~. Upon receipt of the request and with the concurrence of  
8       the cabinet, the court may authorize commitment up to the age of twenty-one  
9       (21).

- 10     (2) An order of temporary custody to the cabinet shall not be considered as a  
11       permissible dispositional alternative.

  
\_\_\_\_\_  
President of Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date 4-11-12